Groups I and II, claims 1-18 and 20, are very plainly and indisputably linked by a special technical feature, within the meaning of PCT Rule 13: namely, claim 15 merely recites a cDNA molecule encoding the antigenic fusion protein of claim 1.

Claims in the relationship of Groups I and II are invariably found to be linked by a special technical feature, within the meaning of PCT Rule 13. That observation is confirmed in the instant case, in that the Examiner during the International Phase, applying exactly the same standard as was required of the present Examiner, found that no lack of unity existed among any of present claims 1-20. This is an independent reason recommending withdrawal of the restriction requirement, in that the U.S. Examiner cannot now contend that any undue searching burden would be imposed, the International Searching Examiner having already searched all of pending claims 1-20.

What, then, was the special insight that led to the imposition of a restriction requirement in the present U.S. National Phase application, so as to produce a result entirely inconsistent with that already generated during the International Phase? The entire attempted justification appears at Item 5 of the Official Action, which states that "Groups I and II are different products. They are distinct because their structures and/or modes of action are different. Therefore, they are patentably distinct."

The above rationale plainly fails to justify a restriction requirement. Under that standard, claims to a protein and the corresponding DNA could never properly appear in the same application; nevertheless, as the Examiner well knows, claims to proteins and the DNA encoding those proteins are routinely permitted in the same application. The Examiner will further note that claim 15 as amended herewith renders its scope even more closely commensurate with that of claim 1.

Therefore, the above discussion demonstrates that a) Groups I and II are not properly divisible by restriction; and b) the Official Action completely fails to carry its burden of demonstrating the propriety of any restriction requirement under PCT Rule 13.

Similarly, Group III (claim 19) should be examined together with Groups I and II, because the principal ingredient of the absorber recited in claim 19 is the fusion protein according to claim 1. Plainly, any search for prior art relative to Group I will yield all prior art relative to Group III, such that no restriction can be justified.

Lastly, we observe the Official Action's attempt to cast different fields of search for Groups I-III, as formulated in the outstanding Official Action, by referencing different sections of the U.S. Manual of Classification. Despite the MPEP's advocacy of this approach, in reality separate classification has no bearing whatsoever on the propriety of a restriction requirement. Classification is an expedient for the convenience of the Patent Office and the searching public,

and cannot in any way be used as a pretext to diminish an applicant's right to a complete examination on the merits of his claimed invention.

From the above discussion, especially in the light of the present amendment, it is believed to be apparent that the restriction requirement is improper and must be withdrawn. Favorable action on the merits of all of claims 1-20 is accordingly respectfully requested.

Respectfully submitted,

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